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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/101,236	07/06/1998	YOSHIHIDE MATOBA	PM255089/SCC	9423

7590 06/16/2003  
FITHCH, EVEN, TABIN & FLANNERY  
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Washington, DC 20006

EXAMINER

MARSCHER, ARDIN H

ART UNIT	PAPER NUMBER
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1631

DATE MAILED: 06/16/2003

18

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/101,236

Applicant(s)

MATOBA ET AL.

Examiner

Ardin Marschel

Art Unit

1631

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 27 May 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. **ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).**

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☒ they raise the issue of new matter (see Note below);
  - (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.

Claim(s) objected to: None.

Claim(s) rejected: 2,20 and 37-42.


Claim(s) withdrawn from consideration: 3-18 and 21-36.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

Continuation of 2. NOTE: The specific fugacity calculation formula proposed for claims 37, 42, and 43 is a new issue that would require further consideration and/or search..

Also, the defining of parameter "N" in claims 37, 42, and 43 as a "residual amount" is NEW MATTER because the parameter "N" is differently defined in the specification as filed as "chemical mass" as set forth on page 2, line 3, and not a residual amount as now proposed in said claims.

Continuation of 5. does NOT place the application in condition for allowance because: of reasons of record due to the above non-entry of the amendment and that arguments are primarily directed to said non-entered amendments. It is additionally responded that the arguments regarding Ex parte Forman and Wands are confusing as applicants apparently have generally attempted to amend the claims to be more specific as directed by the rejection under 35 U.S.C. 112, first paragraph, as based at least partially on said legal decisions. Applicants submit that an Examiner's affidavit or Declaration should be submitted. In response, the rejections of record are deemed sufficient and proper and it is not seen what added submission is needed for such documentation. Regarding instant claim 2 it was previously noted that pesticide movement is the subject matter of Nose which clearly is a human safety concern regarding exposure thereto..

  
ARDIN H. MARSCHEL  
PRIMARY EXAMINER